IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 48 of 1986

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH
and
Hon'ble MR.JUSTICE D.A.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

COMMISSIONER OF INCOME TAX

Versus

AMRIT TEXTILES

Appearance:

1. INCOME TAX REFERENCE No. 48 of 1986
MR MR BB NAYAK FOR MR MR BHATT for Applicant.
NOTICE SERVED for Respondent No. 1

CORAM : MR.JUSTICE M.S.SHAH
and
MR.JUSTICE D.A.MEHTA

Date of decision: 12/09/2001

ORAL JUDGEMENT

(Per : MR.JUSTICE M.S.SHAH)

Mr.B.B.Nayak, learned Counsel for the Revenue makes a request that this is an old Reference pending since 1986 and the issue raised stands concluded by decision of the Apex Court, the Reference may therefore be taken up by this Bench notwithstanding the fact that one of us (D.A.Mehta,J) had represented the assessee. In view of this request, the matter is taken up for final hearing.

2 At the instance of the revenue, the following questions have been referred for the opinion of this Court in respect of the assessment year 1980-81.

1 "Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in coming to the conclusion that for the puroposes of computing the amount of depreciation allowable to the assessee, the amoaunt of Rs.1,91,700/- received as subsidy by the assessee was not liable to be adjusted against the actual written down value of the assets of the assessee ?"

2 "Whether, on the facts and in the circumstances, of the case the Tribunal was right in law in coming to the conclusion that the Commissioner of Income-tax was not entitled to exercise his powers of revision u/s.263 of the Income-tax Act,1961?"

3 In view of the decision of the Supreme Court in C.I.T. vs P.J.Chemicals, 210 ITR 830 laying down the principle that when the subsidy is given to the assessee by way of general incentive for establishing industry in backward area which principle was applied by the Tribunal, Mr.B.B.Nayak, learned Counsel for the Revenue conceded that the Tribunal had rightly allowed the depreciation to the assessee without adjusting subsidy against the cost of the assets, and that the Income Tax Officer had erred in reducing the actual costs/written down value of the assets with the amount of subsidy received by the assessee.

4 In this view of the matter, we answer question No.1 in the affirmative i.e. in favour of the assessee and against the revenue.

5 As far as question No.2 is concerned in view of the aforesaid decision on merits, Mr.Nayak fairly states that the said question is not required to be answered. We accordingly decline to answer question No.2.

6 The Reference accordingly stands disposed of with no order as to costs.

(M.S.Shah,J) (D.A.Mehta, J)

m.m.bhatt